IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	**CA:**
v.	)	
	)	
	)	**42 U.S.C. §§ 7410, 7411 & 7413**
	)	**Violation of the Clean Air Act**
	)	
STONE CONTAINER CORPORATION,	)	
a Delaware Corporation,	)	
	)	
	)	
Defendant.	)	
	)	

UNITED STATES' COMPLAINT
FOR AN INJUNCTION AND FOR CIVIL PENALTIES
PURSUANT TO THE CLEAN AIR ACT
42 U.S.C. §§ 7410, 7411 & 7413

I. INTRODUCTION

1. This is a civil action for penalties and injunctive relief pursuant to sections 110, 111, and 113(b) of the provisions of the Clean Air Act, 42 U.S.C. §§ 7410, 7411, and 7413(b), ("CAA" or "Act") to recover civil penalties for violations of the Act against the Stone Container Corporation of Clayton, Missouri and 150 North Michigan Avenue, Chicago, Illinois 60601 ("Stone" or "Stone Container") and to enjoin violations of the Act by Stone. The violations herein alleged have been committed at Stone's Kraft Pulp and Paper Mill facility operated and located in the city of Hopewell, Virginia.

2. Specifically, Stone has violated the federally enforceable New Source Performance

Standards (NSPS) of 40 C.F.R., Part 60, Subparts A (General Provisions), D (NSPS for Fossil Fuel Steam Generating Units), and BB (NSPS for Kraft Pulp Mills) and has violated its Consolidated PSD (Prevention of Significant Deterioration) Permit at its Kraft Pulp and Paper Mill located in the city of Hopewell, Virginia (the "Facility").

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to the 42 U.S.C. § 7413(b)(3), as the alleged violations have occurred in the Eastern District of Virginia. This Court has jurisdiction over this case additionally pursuant to 28 U.S.C. § 1331, as this complaint is based upon a law of the United States; pursuant to 28 U.S.C.§ 1345, as this is a civil action commenced by the United States; and pursuant to 28 U.S.C.§ 1355, as this is an action for the recovery of penalties incurred under an Act of Congress.

4. Venue for this action is proper in the Eastern District of Virginia pursuant to 42 U.S.C. § 7413(b)(3), because this is the district in which the violations are alleged to have occurred, and pursuant to 28 U.S.C. § 1391(b) and (c), because the defendant may be found in and transacts business in the Eastern District of Virginia, a substantial part of the events or omissions giving rise to the claims involved in this action occurred in the Eastern District of Virginia, and a substantial part of the property that is subject of this action is situated in the Eastern District of Virginia.

5. The United States has authority to bring this action on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") under 42 U.S.C. § 7605, and under 28 U.S.C. § § 516 and 519.

III. NOTICE

6. Notice of the commencement of this action has been given to the Commonwealth of Virginia pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

IV. THE PARTIES

7. The plaintiff in this action is the United States of America which is suing on behalf of the EPA, an agency and instrumentality of the United States.

8. The defendant, Stone Container Corporation, is a Delaware for-profit corporation with its headquarters at 150 North Michigan Avenue, Chicago, Illinois 60601. It is registered to do business in the Commonwealth of Virginia. Originally, the Stone Container Corporation was incorporated under Illinois laws on December 29, 1945 but was merged into the Delaware corporation in 1987. Stone operates in the business sector of the production and sale of commodity pulp, paper, and packaging products. Some of its products are container board, box board, kraft paper, corrugated containers, folding cartons, paper bags and sacks and publication papers.

9. Stone operates a facility in the city of Hopewell, Virginia, which is known as the Kraft Pulp and Paper Mill at the address of P.O. Box 201, 910 Industrial Street, Hopewell, Virginia 23860 (hereinafter "Stone-Hopewell Facility").

V. STATUTORY BACKGROUND

GENERAL

10. Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires each state to adopt a plan for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards ("NAAQS") established under Section 109 of the CAA, 42 U.S.C. § 7409.

11. Section 111 of the CAA, 42 U.S.C. § 7411, requires the Administrator of EPA ("Administrator") to promulgate standards of performance for new sources based upon the category of industrial source and the pollution control technology available to that category of source.

12. The Administrator did promulgate "Standards for New Stationary Sources" which are referred to here as New Source Performance Standards ("NSPS") and which are found in 40 C.F.R. Part 60. The NSPS regulations applicable to this action are found in 40 C.F.R. Part 60, Subparts D and BB.

13. Section 113 of the CAA and 40 C.F.R. Part 52, Subpart VV (40 C.F.R. §§52.2420, et seq.,) authorizes the EPA to bring an action for injunctive relief and civil penalties where the Commonwealth of Virginia's State Implementation Plan ("SIP") is identified as an EPA-approved plan.

14. EPA issued a Prevention of Significant Deterioration ("PSD") permit pursuant to 40 C.F.R. § 52.21 (Prevention of Significant Deterioration of Air Quality) to the prior owner and operator of the Stone-Hopewell Facility, Continental Can Company, on December 6, 1978. The PSD provisions of 40 C.F.R. § 52.21(b) - (w) were incorporated and made a part of the federally enforceable Virginia SIP pursuant to 40 C.F.R. § 52.2451(b). As of June 3, 1981, the Commonwealth of Virginia received the full delegation of authority for all portions of the Federal PSD program as set forth in 40 C.F.R. § 52.21, and as provided in 40 C.F.R. § 52.2451(c), and pursuant to 40 C.F.R. § 52.21(u).

15. Section 113(a)(1) of the Act, as amended, 42 U.S.C. § 7413(a)(1), provides that if, on the basis of available information, the Administrator finds that any person has violated or is in

violation of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. Pursuant to Section 113(a)(1)(C) of the Act, as amended, 42 U.S.C. § 7413(a)(1)(C), at any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of Title 28), bring a civil judicial action to enforce violations of the CAA and to seek injunctive relief in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b),

16. On September 5, 1997, EPA issued a NOV to Stone Container for the SIP and permit violations herein alleged in this Complaint and provided the Commonwealth of Virginia Department of Environmental Quality ("VDEQ") with a copy of that NOV.

17. An NOV is not a necessary prerequisite to the filing of a civil action to enforce an NSPS violation, as 42 U.S.C. § 7413(a)(3)(C) of the CAA authorizes the EPA to bring a civil action on the basis of a finding by the Administrator that a person has violated 42 U.S.C. §§ 7411 or 7412.

18. 42 U.S.C. § 7413(b)(1) and (2) provides for the appropriate commencement of a civil judicial enforcement action for a permanent or temporary injunction and/or to assess and recover a civil penalty for violations of SIP provisions, PSD permit and NSPS requirements in the case of any person that is the owner or operator of an affected source, a major emitting facility or a major stationary source.

19. Stone is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e). The Stone-Hopewell Facility is a "major stationary source" and a "major emitting facility" within the meaning of Section 302(j) of the Act, 42 U.S.C. §7602(j), because it directly emits or has the potential to emit 100 tons per year or more of one or more of the major

pollutants Particulate Matter ("PM"), Carbon Monoxide ("CO"), Sulfur Dioxide ("SO_2"), Hydrogen Sulfide, Nitrogen Oxides ("NOx") and Volatile Organics.

20. Because Stone has violated applicable provisions of federal and state air emissions standards, including SIP provisions, PSD permit and NSPS requirements, it is appropriate to bring a civil action for injunctive relief and for civil penalties.

21. The general NSPS requirements, 40 C.F.R. Part 60, Subpart A, and the specific NSPS provisions of 40 C.F.R. Part 60 Subpart D (Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971) and , 40 C.F.R. Part 60 Subpart BB (Standards of Performance for Kraft Pulp Mills) set forth the various required operating conditions and standards for affected facilities and their associated pollution control devices. They also establish the various emissions limits, testing procedures, monitoring and record-keeping requirements for affected facilities.

FACTUAL ALLEGATIONS
Description of the Stone-Hopewell Facility

22. Stone operates its kraft pulp mill utilizing a number of components which have been the subject of inspection by the EPA. These components have been involved in the various violations alleged.

23. Combination Boiler

40 C.F.R. Part 60, Subpart D, applies to affected facilities including fossil-fuel fired steam generating units of greater than 250 million BTU per hour heat input capacity that were constructed, reconstructed or modified after August 17, 1971. At all times relevant to the allegations set forth in this Complaint, Stone operated, and now operates, a combination boiler at

the Stone-Hopewell Facility. The Stone-Hopewell Facility's combination boiler is a fossil-fuel fired steam generating unit that was constructed in 1980 and has the capacity to fire coal at a rate of 755 million BTUs per hour. It is thus an affected facility under 40 C.F.R. Part 60, Subpart D.

24. Goslin-Birmingham Concentrator Set

The provisions of 40 C.F.R. Part 60, Subpart BB, apply to affected facilities including digester systems, brown stock washer systems, multiple-effect evaporator systems, recovery furnaces, smelt dissolving tanks, lime kilns and condensate stripper systems in kraft pulp mills which began construction or were modified after September 24, 1976. At all times relevant to the allegations set forth in this Complaint, Stone Container operated a Goslin-Birmingham concentrator set at the Stone-Hopewell Facility. The Stone-Hopewell Facility's Goslin-Birmingham concentrator set was a multiple effect evaporator system, within the meaning and definition of 40 C.F.R. §§ 60.281(f), constructed in 1979 and taken out of service in March 2001. It was thus an affected facility under 40 C.F.R. Part 60, Subpart BB.

25. Smelt Dissolving Tank and Recovery Boiler

At all times relevant to the allegations set forth in this Complaint, Stone Container operated, and Stone now operates, a recovery furnace (hereinafter "recovery boiler") and a smelt dissolving tank, within the meaning and definition of 40 C.F.R. §§ 60.281(h) and (m), respectively, at the Stone-Hopewell Facility. The smelt dissolving tank and recovery boiler both were constructed in 1980 and they both are affected facilities under 40 C.F.R. Part 60, Subpart BB.

COUNT I: Violation of 40 C.F.R. § 60.45(a) - Failure to Maintain, and Operate Continuous Monitoring Systems for Measuring Opacity of Emissions, Sulfur Dioxide Emissions and Nitrogen Oxides Emissions from the Stone-Hopewell Facility's combination boiler.

26. Plaintiff re-alleges paragraphs 1 through 25, inclusive, which are incorporated herein by reference.

27. 40 C.F.R. § 60.40(a)(1) provides that the affected facilities to which the provisions of 40 C.F.R. Part 60, Subpart D, apply include "[e]ach fossil-fuel-fired steam generating unit of more than 73 megawatts heat input rate (250 million Btu per hour)."

28. 40 C.F.R. § 60.40(c) provides that, with exceptions not applicable here, ". . . any facility under paragraph (a) of this section that commenced construction or modification after August 17, 1971, is subject to the requirements of this Subpart [D]."

29. 40 C.F.R. §§ 60.42 - 60.44 set forth the applicable emissions standards for PM and opacity, SO_2 and NOx at affected facilities at which the 40 C.F.R. Part 60, Subpart D requirements apply. These emissions standards are as follows:

PM	0.10 lb/mmBTU;
Opacity	20 percent (except for one six-minute period per hour of not more than 27 percent opacity);
SO_2	1.2 lb/mmBTU;
NO_x	0.7 lb/mmBTU.

30. 40 C.F.R.§60.45(a) requires, with exceptions not applicable here, that emission monitoring systems for opacity, sulfur dioxide, nitrogen oxides, and either oxygen or carbon dioxide be installed, calibrated, maintained and operated by owners and operators for fossil-fuel-

fired steam generators at stationary sources.

31. At the time of a March 4 and 5, 1997 EPA inspection of the Stone-Hopewell Facility, Stone Container had installed, and was operating, a continuous opacity monitoring system ("COMS") and SO_2 and an NO_x continuous emissions monitoring system ("CEMS") to measure opacity, SO_2 and NO_x emissions from the Stone-Hopewell Facility's combination boiler.

32. Stone Container submitted to the VDEQ excess emissions reports for time periods including calendar years 1995 and 1996 and for the first quarter of calendar year 1997.

33. Stone Container's excess emissions reports for time periods including calendar years 1995 and 1996 and for the first quarter of calendar year 1997 generally revealed that required emissions monitoring systems were not available and were not operating to monitor emissions from the Stone-Hopewell Facility's combination boiler for considerable periods of time during the reporting periods and specifically revealed that Stone Container:

A. failed to maintain and operate a NO_X CEMS on the Facility's combination boiler on multiple occasions totaling 11.8% of the time in the 4th quarter of 1995 and 14.2% of the time in the 2nd quarter of 1996, in violation of 40 C.F.R. § 60.45(a);

B. failed to maintain and operate a SO_2 CEMS on the Facility's combination boiler on multiple occasions totaling 12.8% of the time in the 2nd quarter of 1996 and 15.7% of the time in the 3rd quarter of 1996, in violation of 40 C.F.R. § 60.45(a); and

C. failed to maintain and operate a COMS on the Facility's combination boiler on multiple occasions totaling 11.5% of the time in the 1st quarter of 1997, in violation of 40 C.F.R. § 60.45(a).

COUNT II: Violation of 40 C.F.R. § 60.283(a)(1) - Discharging into the Atmosphere From an Affected Facility Component Gases Which Contain Total Reduced Sulfur ("TRS") in Excess of 5 PPM by Volume on a Dry Basis, Corrected to 10 Percent Oxygen.

34. Plaintiff re-alleges paragraphs 1 through 33, inclusive, which are incorporated herein by reference.

35. Pursuant to 40 C.F.R. § 60.281(c), the term "[t]otal reduced sulfur (TRS)" means: "the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, that are released during the kraft pulping operation and measured by Reference Method 16."

36. 40 C.F.R. §§ 60.280(a) and (b) provide, with exceptions not applicable here, that multiple-effect evaporator systems in kraft pulp mills that commenced construction or modification after September 24, l976 are affected facilities to which the provisions of 40 C.F.R. Part 60, Subpart BB, are applicable.

37. 40 C.F.R. § 60.283 provides, in relevant part, that:

> (a) On and after the date on which the performance test required to be conducted by [40 C.F.R.] § 60.8 is completed, no owner or operator subject to the provisions of this Subpart [40 C.F.R. Part 60, Subpart BB] shall cause to be discharged to the atmosphere: (1) from any . . . multiple-effect evaporator system . . . any gases which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to 10 percent oxygen, unless the following conditions are met:
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> * * *
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> (iii) The gases are combusted with other waste gases in an incinerator or other device, or combusted in a lime kiln or recovery furnace not subject to the provisions of this Subpart [40 C.F.R. Part 60, Subpart BB], and are subjected to a minimum temperature of 1200°F. for at least 0.5 second. . . .

38. Non-condensible gases ("NCGs") from the Stone-Hopewell Facility's Goslin-

Birmingham Concentrator Set are mixed and collected in the Facility's NCG system before being ducted to the Facility's lime kiln for incineration.

39. When the NCG gases from the Stone-Hopewell Facility's Goslin-Birmingham Concentrator Set are collected in the Facility's NCG system and are thereafter incinerated in the lime kiln, which is not an NSPS Subpart BB affected facility, the incineration requirements of 40 C.F.R. § 60.283(a)(1)(iii) apply rather than the 5 ppm TRS emission standard of 40 C.F.R. § 60.283(a)(1).

40. On the basis of information, including that submitted by Stone Container on April 14, 1997, there were time periods when Stone Container bypassed the lime kiln and emitted NCG gases, including NCG gases from the Goslin-Birmingham Concentrator Set, directly to the atmosphere without treatment or incineration.

41. In an April 14, 1997 submittal, Stone Container provided information including the dates, times, duration and causes of each such lime kiln bypassing incident from January, 1993 through March, 1997. This information revealed the total number of minutes per calendar quarter and the total percentage of operating time during which Stone Container bypassed the lime kiln and emitted NCG gases, including NCG gases from the Goslin-Birmingham Concentrator Set, directly to the atmosphere without treatment or incineration from the first calendar quarter of 1993 through the first calendar quarter of 1997, as set forth below:

Quarter	Total Bypassing (Minutes)	Percent of Operating Time with Bypassing
1stQ93	4125	3.18
2ndQ93	18223	15.11
3rdQ93	4393	4.01
4thQ93	7857	5.87
1stQ94	15664	10.99
2ndQ94	9661	7.3
3rdQ94	4708	3.52
4thQ94	6676	4.99
1stQ95	8410	6.42
2ndQ95	19327	19.15
3rdQ95	4597	3.7
4thQ95	7310	5.82
1stQ96	11472	8.74
2ndQ96	7188	6.05
3rdQ96	2858	2.13
4thQ96	12571	9.39
1stQ97	1861	1.42

42. Stone Container conducted two tests to measure the TRS content of the NCG collection system line. A January 1996 test indicated a TRS content of 1021 ppm TRS and a May/June, 1997 test indicated a TRS content of 199 ppm TRS.

43. Because the Goslin-Birmingham Concentrator Set was a multiple effect evaporator system and an NSPS Subpart BB affected facility that was subject to the 5 ppm by volume on a dry basis, corrected to 10 percent oxygen, TRS emission standard of 40 C.F.R. § 60.283(a)(1) when its NCG discharges were not combusted with other wastes in a lime kiln that is not subject to the NSPS Subpart BB TRS emission standards, the NCG gases from the Goslin-Birmingham Concentrator Set (which were mixed with NCG gases collected from various other facilities by the Stone-Hopewell Facility's NCG collection system), remained subject to NSPS Subpart BB emission standards during periods of lime kiln bypass.

44. From in and about January 1993 through in and about April 1997, Stone Container violated the provisions of 40 C.F.R. § 60.283(a)(1) by discharging into the atmosphere from its

Goslin-Birmingham concentrator set gases which contained TRS in excess of 5 PPM by volume on a dry basis, corrected to 10 percent oxygen.

COUNT III: Violation of 40 C.F.R. § 60.11(d) - Operating the Stone-Hopewell Facility in a Manner Not Consistent with Good Air Pollution Control Practice

45. Plaintiff re-alleges paragraphs 1 through 44, inclusive, which are incorporated herein by reference.

46. NCG gases from the Stone-Hopewell Facility's Goslin-Birmingham Concentrator Set (which were mixed with NCG gases collected from various other facilities by the Stone-Hopewell Facility's NCG collection system), remained subject to the emission standards set forth at 40 C.F.R.§ 60.283(a)(1)(iii) during periods of lime kiln bypass, when such NCG gases were not incinerated in the lime kiln but were emitted directly to the atmosphere without treatment or incineration.

47. 40 C.F.R. § 60.11(d) provides, in relevant part, as follows:

> At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

48. Stone Container managed the NCGs from the Stone-Hopewell Facility's Goslin-Birmingham Concentrator Set by collecting the NCGs from this and other facilities, conveying the mixed gases through its NCG collection system and incinerating these mixed gases in the Facility's lime kiln. The Stone-Hopewell Facility did not have a back-up point of incineration

for NCGs in the event the lime kiln became unavailable as a result of shutdown, malfunction and/or maintenance.

49. It is industry practice at pulp mills in the Commonwealth of Virginia and in other states to use at least one backup incineration point for purposes of controlling the release of TRS gases into the atmosphere from NCG systems.

50. On the basis of information available to EPA, including monitoring results, opacity observations, review of operating and maintenance procedures, inspection of the Facility and the source, as well as information pertaining to industry practices at pulp mills in the Commonwealth of Virginia and in other states, EPA has determined that it is good air pollution control practice to use at least one backup incineration point for purposes of controlling the release of TRS gases into the atmosphere from NCG collection systems.

51. From in and about January 1993 through in and about April 1997, during periods of startup, shutdown, scheduled maintenance, and repeated and regular equipment breakdown when the lime kiln was unavailable to incinerate mixed NCG gases from the Goslin-Birmingham Concentrator Set and other facilities, Stone Container directly discharged NCGs from the Stone-Hopewell Facility NCG collection system into the atmosphere on 630 separate occasions over a total of 2,442 hours.

52. As a result of Stone's failure to install and use at least one backup incineration point to control the release of TRS emissions into the atmosphere from the Stone-Hopewell Facility's NCG collection system during the period from in and about January 1993 through in and about March 2001, Stone failed to operate the Stone-Hopewell Facility in a manner consistent with good air pollution control practice, in violation of 40 C.F.R. § 60.11(d).

COUNT IV: Violation of 40 C.F.R. §60.284(a)(2) - Failure to Install, Calibrate, Maintain and Operate a CEMS on the Goslin-Birmingham Concentrator Set from January 1993 through April 1997.

53. Plaintiff re-alleges paragraphs 1 through 52, inclusive, which are incorporated herein by reference.

54. 40 C.F.R. §60.284(a)(2) provides that:

> (a) Any owner or operator subject to the provisions of this [40 C.F.R. Part 60] subpart [BB] shall install, calibrate, maintain, and operate the following continuous monitoring systems: . . .
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> * * *
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> (2) Continuous monitoring systems to monitor and record the concentration of TRS emissions on a dry basis and the percent of oxygen by volume on a dry basis in the gases discharged into the atmosphere from any lime kiln, recovery furnace, digester system, brown stock washer system, multiple-effect evaporator system, or condensate stripper system, except where the provisions of 40 C.F.R. § 60.283(a)(1) (iii) or (iv) apply.

55. The monitoring requirements of 40 C.F.R. § 60.13 additionally provide, in relevant part, that:

> (a) For the purposes of this section [40 C.F.R. § 60.13], all continuous monitoring systems required under applicable Subparts shall be subject to the provisions of this section [40 C.F.R. § 60.13] upon promulgation of performance specifications for continuous monitoring systems under appendix B to this part [40 C.F.R. Part 60] and, if the continuous monitoring system is used to demonstrate compliance with the emission limits on a continuous basis, Appendix F to this part [40 C.F.R. Part 60], unless otherwise specified in an applicable Subpart or by the Administrator. Appendix F is applicable December 4, 1987.
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> * * *
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> (g)<u>When the effluents from a single affected facility or two or more affected facilities subject to the same emission standards are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject</u>

> to the same emissions standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator shall install an applicable continuous monitoring system on each separate effluent unless the installation of fewer systems is approved by the Administrator. When more than one continuous monitoring system is used to measure the emissions from one affected facility (e.g., multiple breeching, multiple outlets), the owner or operator shall report the results as required from each continuous monitoring system. (Emphasis supplied).

56. From in and about January 1993 through in and about April 1997, Stone operated the Stone-Hopewell Facility's lime kiln bypass stack as an alternate emission point for the direct discharge to the atmosphere of NCG gases collected from the Goslin-Birmingham Concentrator Set by the Stone-Hopewell Facility's NCG collection system during periods when the lime kiln was unavailable to incinerate mixed NCG gases collected from the Goslin-Birmingham Concentrator Set and other facilities.

57. From in and about January 1993 through in and about April 1997, Stone Container violated the provisions of 40 C.F.R. §60.284(a)(2) by failing to install, calibrate, maintain, and operate a CEMS to monitor TRS compound emissions from the Stone-Hopewell Facility's Goslin-Birmingham Concentrator Set that were collected in the Facility's NCG collection system and discharged to the atmosphere from the lime kiln bypass stack during periods when the lime kiln was unavailable to incinerate mixed NCG gases from the Goslin-Birmingham Concentrator Set and other facilities.

> **COUNT V**: Violation of 40 C.F.R. § 60.282(a)(2) - Discharging into the Atmosphere from the Smelt Dissolving Tank Gases Which Contained Particulate Matter in Excess of 0.1 G/Kg Black Liquor Solids

58. Plaintiff re-alleges paragraphs 1 through 57, inclusive, which are incorporated herein by reference.

59. 40 C.F.R. § 60.282(a)(2) provides, in relevant part, that:

> (a) On and after the date on which the performance test required to be conducted by [40 C.F.R.] § 60.8 is completed, no owner or operator subject to the provisions this Subpart [40 C.F.R. Part 60, Subpart BB] shall cause to be discharged to the atmosphere:
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> * * *
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> (2) from any smelt dissolving tank any gases which contain particulate matter in excess of 0.1 g/kg black liquor solids (dry weight) [0.2 pounds per ton black liquor solids (dry weight)].

60. Stone Container tested particulate matter emissions from the Stone-Hopewell Facility's smelt dissolving tank vent on December 12, 1996. In that test, the particulate matter emission rate exceeded the allowable rate specified in 40 C.F.R. § 60.282(a)(2) by testing at 0.35 pounds per ton black liquor solids from the Stone-Hopewell Facility's smelt dissolving tank vent.

61. Stone Container retested particulate matter emissions from the Stone-Hopewell Facility's smelt dissolving tank on March 6, 1997 but tested in only two runs. Pursuant to 40 C.F.R. § 60.8(f), Method 16B, three test runs are required in order to constitute a valid test.

62. After making repairs and improvements in scrubber operations, Stone Container again re-tested particulate matter from the Stone-Hopewell Facility's smelt dissolving tank on May 21, 1997. In that test, the particulate matter emission rate again exceeded the allowable rate specified in 40 C.F.R. § 60.282(a)(2) by testing at 0.218 pounds per ton black liquor solids from the Stone-Hopewell Facility's smelt dissolving tank vent.

63. From on or about December 12, 1996, through at least May 21, 1997, Stone Container violated the provisions of 40 C.F.R. § 60.282(a)(2) by discharging into the atmosphere from the Stone-Hopewell Facility's smelt dissolving tank gases which contained particulate matter in excess of 0.1 g/kg black liquor solids (dry weight) [0.2 pounds per ton black liquor solids (dry

weight)].

COUNT VI: Violation of 40 C.F.R. § 60.284(a)(2) - Failure to Install and Operate a CEMS for TRS Compound Emissions from the Recovery Boiler

64. Plaintiff re-alleges paragraphs 1 through 63, inclusive, which are incorporated herein by reference.

65. During the March 4 and 5, 1997 EPA inspection, the EPA inspectors were informed of and observed the existence and operation of the Stone-Hopewell Facility's recovery boiler. The recovery boiler was constructed in 1980 and is an affected facility under 40 C.F.R. Part 60, Subpart BB.

66. 40 C.F.R. § 60.284(a)(2) states as follows:

> (a) Any owner or operator subject to the provisions of this subpart shall install, calibrate, maintain, and operate the following continuous monitoring systems:
>
> * * *
>
> (2) Continuous monitoring systems to monitor and record the concentration of TRS emissions on a dry basis and the percent of oxygen by volume on a dry basis in the gases discharged into the atmosphere from any lime kiln, recovery furnace, digester system, brown stock washer system, multiple-effect evaporator system, or condensate stripper system, except where the provisions of § 60.283(a)(1) (iii) or (iv) apply. These systems shall be located downstream of the control device(s) and the spans of these continuous monitoring system(s) shall be set:
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> (i) At a TRS concentration of 30 ppm for the TRS continuous monitoring system, except that for any cross recovery furnace the span shall be set at 50 ppm.
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> (ii) At 20 percent oxygen for the continuous oxygen monitoring system.

67. On March 4 and 5, 1997, the dates of an EPA inspection of the Stone-Hopewell Facility, two CEMS (the "East TRS CEMS" and the "West TRS CEMS") were installed at the recovery boiler and Stone Container was operating these CEMS to monitor and record TRS emissions on a

dry basis, and the percent oxygen by volume on a dry basis, in the gases discharged into the atmosphere from the recovery boiler.

68. Stone Container submitted recovery boiler excess emissions reports to the VDEQ for the period including the calendar years 1995 and 1996, and for the first quarter of 1997.

69. During the fourth quarter of 1995 (4Q95), the East TRS CEMS on the recovery boiler was not available for 13.2% of the time, and the West TRS CEMS on the recovery boiler was not available for 17.8% of the time.

70. During the first quarter of 1996 (1Q96) the East TRS CEMS on the recovery boiler was not available for 14.3% of the time, and the West TRS CEMS on the recovery boiler was not available for 17.1% of the time.

71. From in and about October 1995 until in and about December 1995 and from in and about January 1996 until in and about March 1996, Stone Container failed to operate a CEMS to monitor and record the concentration of TRS emissions on a dry basis, and the percent of oxygen by volume on a dry basis, in the gases discharged into the atmosphere from a recovery furnace at the Stone-Hopewell Facility, in violation of the requirements of 40 C.F.R. § 284(a)(2).

COUNT VII: Violation of Condition 6.a. of Consolidated PSD Permit - Exceeding the Emission Standard of 0.2 lbs./ton Black Liquor Solids Particulate Matter Emissions and 12.5 lbs/hr Particulate Matter Emissions from the Stone-Hopewell Facility's Smelt Dissolving Tank

72. Plaintiff re-alleges paragraphs 1 through 71, inclusive, which are incorporated herein by reference.

73. On December 6, 1978, the EPA issued a PSD permit to the prior owner and operator of the Stone-Hopewell Facility, the Continental Can Company, pursuant to 40 C.F.R. § 52.21

(Prevention of Significant Deterioration of Air Quality. The PSD provisions of 40 C.F.R. § 52.21(b) - (w) were incorporated and made a part of the federally enforceable Virginia SIP pursuant to 40 C.F.R. § 52.2451(b). As of June 3, 1981, the Commonwealth of Virginia received the full delegation of authority for all portions of the Federal PSD Program as set forth in 40 C.F.R. § 52.21, and as provided in 40 C.F.R. § 52.2451(c), and pursuant to 40 C.F.R. § 52.21(u).

74. On April 2, 1984, the Virginia State Air Pollution Control Board ("VSAPCB") issued a consolidated PSD permit to Stone Container (hereinafter, "Consolidated PSD Permit"). The Consolidated PSD Permit incorporated all of the conditions of a prior PSD permit issued December 6, 1978 and all of the conditions from a previously-issued VSAPCB permit dated October 17, 1978. Condition 6.a. of the Consolidated PSD Permit established PM and TRS limits for the Stone-Hopewell Facility's smelt dissolving tank.

75. Condition 6.a. of the Consolidated PSD Permit limits the emissions from the Stone-Hopewell Facility's smelt dissolving tank to no more than 0.2 lbs./ton and 12.5 lbs./hour of dry black liquor solids.

76. Stone Container tested PM and TRS compound emissions from its smelt dissolving tank vent on December 12, 1996. On that date, PM emission levels from the Stone-Hopewell Facility's smelt dissolving tank vent exceeded the levels of condition 6.a. of the Consolidated PSD Permit by testing at 25.3 lbs./hour and 0.35 lbs./ton.

77. Stone Container retested particulate matter emissions from the Stone-Hopewell Facility smelt dissolving tank on March 6, 1997, but tested in only two runs. Pursuant to 40 C.F.R. § 60.8(f), Method 16B, three test runs are required in order to constitute a valid test.

78. On May 21, 1997, Stone Container re-tested particulate matter emissions from the Stone-

Hopewell Facility's smelt dissolving tank. On that date, particulate matter levels from the Stone-Hopewell Facility's smelt dissolving tank vent exceeded the levels of condition 6.a. of the Consolidated PSD Permit by testing at 14.7 lbs./hour and 0.218 lbs./ton.

79. From in and about December 12, 1996 through at least May 21, 1997, Stone Container exceeded the applicable particulate matter emission limits for the Stone-Hopewell Facility's smelt dissolving tank, in violation of condition 6.a. of the Consolidated PSD Permit.

COUNT VIII: Violation of Condition 6.b. of Consolidated PSD Permit - Exceeding the PSD Permit Emission Standard of 0.0168 Lbs/Ton Black Liquor Solids TRS Compound Emissions and 1.1 lbs./hour TRS Compound Emissions from the Smelt Dissolving Tank.

80. Plaintiff re-alleges paragraphs 1 through 79, inclusive, which are incorporated herein by reference.

81. Condition 6.b. of the Consolidated PSD Permit limits the emissions from the Stone-Hopewell Facility's smelt dissolving tank to no more than 0.0168 lbs./ton and 1.1 lbs./hour of dry black liquor solids of TRS emissions.

82. Stone Container tested PM and TRS compound emissions from its smelt dissolving tank vent on December 12, 1996. On that date, TRS emission levels from the Stone-Hopewell Facility's smelt dissolving tank vent exceeded the levels of condition 6.b. of the Consolidated PSD Permit by testing at 1.54 lbs./hour and 0.023 lbs./ton.

83. Stone Container retested TRS emissions from the Stone-Hopewell Facility's smelt dissolving tank on May 28,1997, but tested in only two runs. Pursuant to 40 C.F.R. § 60.8(f), Method 16B, three test runs are required in order to constitute a valid test.

84. On May 21 and 23, 1997, Stone Container re-tested TRS emissions from the smelt

dissolving tank. On those dates, TRS emission levels from the Stone-Hopewell Facility's smelt dissolving tank vent exceeded the levels of condition 6.b. of the Consolidated PSD Permit by testing at1.17 lbs./hour and 0.018 lbs./ton and at 1.45 lbs./hour and 0.023 lbs./ton, respectively.

85. From in and about December 12, 1996 through at least May 23, 1997, Stone Container exceeded the applicable TRS emission limits for the Stone-Hopewell Facility's smelt dissolving tank, in violation of condition 6.b. of the Consolidated PSD Permit.

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court grant the following relief:

1. Permanently enjoin defendant from further violations of the CAA, 42 U.S.C. § 7401 et seq., and Sections 9 VAC 5- 40 1680 and 9 VAC5 - 40-1690 of the Virginia Regulations.

2. Order the Defendant to pay civil penalties for each and every day of each violation herein alleged that falls within the applicable five year statute of limitations period, which period has been tolled from February 24, 2000 through the present pursuant to Tolling Agreements executed by the United States and the Defendant. Such penalties shall be up to $25,000 per day for each violation occurring before January 30, 1997, and, pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69360, up to $27,500 per day for each violation occurring on or after that date, with the exception of the time period between December 12, 1996, and May 29, 1997, which period was the subject of a prior Notice of Violation and a Consent Order dated June 26, 1997, by the Virginia Department of Environmental Quality.

3. Award the United States the costs and disbursements in this action.

4. Award such other relief as this Court may deem just and proper.

Respectfully submitted,

Date:_____ _____

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